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Robert P. Ford, an Individual, d/b/a Robert Ford Electric and International Brotherhood of Electrical Workers, Local Union No. 59. Case 16–CA–18028

November 18, 1996

DECISION AND ORDER

BY MEMBERS BROWNING, FOX, AND HIGGINS

Upon a charge and amended charge filed by the Union on May 23 and June 10, 1996, the General Counsel of the National Labor Relations Board issued a complaint on September 11, 1996, against Robert P. Ford, an individual, d/b/a Robert Ford Electric, the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act. Although properly served copies of the charge, amended charge, and complaint, the Respondent failed to file an answer.

On October 21, 1996, the General Counsel filed a Motion for Default Summary Judgment with the Board. On October 22, 1996, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Default Summary Judgment disclose that the Region, by letter dated October 3, 1996, notified the Respondent that unless an answer were received by October 10, 1996, a Motion for Default Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Default Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been owned by Robert P. Ford, a sole proprietorship, doing business as Robert Ford Electric. At all material times the Respondent, a sole proprietorship with an office and place of business in Plano, Texas, has been engaged in the construction industry as an electrical contractor. During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations, purchased and received at its Plano, Texas facility goods valued in excess of \$50,000 from other enterprises, including Crawford Electric Supply, located within the State of Texas, each of which other enterprises had received goods directly from points outside the State of Texas. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

About January 25 and 26, 1996, the Respondent, by Robert Ford, the owner, promulgated an invalid no-solicitation rule by stating "he was not going to be literated like that" and that union literature could not be distributed to Ford's employees on Ford's time. The Respondent promulgated and maintained this rule to discourage its employees from forming, joining and/or assisting the Union or engaging in concerted activities.

About January 26, 1996, the Respondent threatened to terminate its employee for engaging in union activities.

About January 25 and 26, 1996, respectively, the Respondent refused to hire employees Frank Allen Jr. and Danny Baird because these employees of the Respondent formed, joined, and/or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

CONCLUSIONS OF LAW

1. By the acts and conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

2. By refusing to hire Frank Allen Jr. and Danny Baird, the Respondent has also been discriminating in regard to hire or tenure or terms or conditions of employment of its employees, thereby discouraging mem-

bership in a labor organization, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(1) by promulgating an invalid no-solicitation rule, we shall order the Respondent to rescind the invalid rule. In addition, having found that the Respondent violated Section 8(a)(3) and (1) by refusing to hire Frank Allen Jr. and Danny Baird, we shall order the Respondent to offer them immediate employment to the positions which they would have had but for the unlawful discrimination against them, or, if those jobs no longer exist, to substantially equivalent positions, and to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to expunge from its files any and all references to the unlawful refusals to hire Allen and Baird, and to notify them, in writing, that this has been done.

ORDER

The National Labor Relations Board orders that the Respondent, Robert P. Ford, an Individual, d/b/a Robert Ford Electric, Plano, Texas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Promulgating an invalid no-solicitation rule.

(b) Threatening to terminate employees for engaging in union activities.

(c) Refusing to hire employees because they form, join, and/or assist the International Brotherhood of Electrical Workers, Local Union No. 59, or engage in concerted activities, or to discourage employees from engaging in these activities.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind the invalid no-solicitation rule it promulgated on January 25 and 26, 1996.

(b) Within 14 days from the date of this order, offer Frank Allen Jr. and Danny Baird immediate employment to the positions which they would have had but for the unlawful discrimination against them, or, if those jobs no longer exist, to substantially equivalent positions.

(c) Make Frank Allen Jr. and Danny Baird whole for any loss of earnings and other benefits suffered as a result of the discrimination against them in the manner set forth in the remedy section of this decision.

(d) Within 14 days from the date of this order, expunge from its files any and all references to the unlawful refusals to hire Allen and Baird, and, within 3 days thereafter, notify them, in writing, that this has been done and that the unlawful conduct will not be used against them in any way.

(e) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facility in Plano, Texas, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 16, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 23, 1996.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. November 18, 1996

Margaret A. Browning, Member

Sarah M. Fox, Member

John E. Higgins Jr., Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT promulgate an invalid no-solicitation rule.

WE WILL NOT threaten our employees for engaging in union activities.

WE WILL NOT refuse to hire employees because they form, join, and/or assist the International Brotherhood

of Electrical Workers, Local Union No. 59, engage in concerted activities, or to discourage employees from engaging in these activities.

WE WILL NOT, in any like or related manner, interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL rescind the invalid no-solicitation rule we promulgated on January 25 and 26, 1996.

WE WILL, within 14 days from the date of the Board's order, offer Frank Allen Jr. and Danny Baird immediate employment to the positions which they would have had but for our unlawful discrimination against them, or, if those jobs no longer exist, to substantially equivalent positions.

WE WILL make Frank Allen Jr. and Danny Baird whole for any loss of earnings and other benefits suffered as a result of our discrimination against them, in the manner set forth in a decision of the National Labor Relations Board.

WE WILL, within 14 days from the date of this order, expunge from our files any and all references to our unlawful refusals to hire Allen and Baird, and, within 3 days thereafter, notify them, in writing, that this has been done and that our unlawful conduct will not be used against them in any way.

ROBERT P. FORD D/B/A ROBERT FORD
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